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Decision

Matter of: Allied Technology Group, Inc.

File: B-412434; B-412434.2

Date: February 10, 2016

Jason A. Carey, Esq., J. Hunter Bennett, Esq., and Nooree Lee, Esq., Covington & Burling LLP, for the protester.

Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., Caroline A. Keller, Esq., Kirsten W. Konar, Esq., and Jacob W. Scott, Esq., Vedder Price, P.C., for the intervenor.

Kasia Dourney, Esq., and Carl Verneti, Esq., Department of Homeland Security, U.S. Customs and Border Protection, for the agency.

Pedro E. Briones, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging an agency's technical evaluation and best-value tradeoff decision is denied where the record demonstrates that the evaluation and tradeoff decision were reasonable and consistent with the terms of the solicitation.

2. Protest alleging that awardee engaged in an improper bait and switch scheme regarding its proposed personnel is denied where the record does not demonstrate that awardee knowingly or negligently represented that it would rely on specific personnel that it did not reasonably expect to furnish during contract performance.

DECISION

Allied Technology Group, Inc. (ATG), of Rockville, Maryland, protests the issuance of a task order to MacAulay Brown, Inc. (MacB), of Dayton, Ohio, under request for proposals (RFP) No. HSBP1013R0090, issued by the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), for support services for the Office of Technology, Innovation, and Acquisition (OTIA).¹ ATG challenges

¹ Although the solicitation (which was amended four times) anticipated the issuance of a task order, the solicitation was issued as an RFP. Our references are to the conformed version of the solicitation provided by the agency, unless otherwise indicated.

CBP's evaluation of technical proposals and the agency's source selection decision. ATG also contends that MacB proposed key personnel that it did not intend to provide.

We deny the protest.

BACKGROUND

The RFP was issued to contractors holding indefinite-delivery, indefinite-quantity (IDIQ) Technical, Acquisition, Business, and Support Services (TABSS)² contracts, and provided for the issuance of a hybrid task order for a base year (including a 6-month transition-in period), three option years, and a 6-month transition-out period.³ See RFP at 7, 12. The RFP's statement of work (SOW) required the contractor to provide various acquisition, business, and general management support services to a number of OTIA directorates and offices. Id. § J-1, SOW, at 4. The SOW stated that the services require highly experienced personnel and subject matter experts (SME) in a number of specified areas, such as program management, data analysis, acquisition planning, and acquisition workforce management. See id. at 4-18.

The solicitation stated that the task order would be issued on a best-value tradeoff basis considering the following evaluation factors, in descending order of importance: technical/management, past performance, and price. RFP at 47-51. The RFP advised that the non-price factors, when combined, were approximately equal to the price factor. Id. at 51. Offerors were instructed to submit separate technical and price proposals. Id. at 39-44.

In their technical proposals, offerors were to propose a technical approach and a management approach for meeting the SOW requirements. Id. at 41. With regard to their technical approach, offerors were to describe their proposed approach to meeting the SOW technical requirements. Id. With regard to their management approach, offerors were to propose a staffing plan and a labor mix/hours, and describe their approach to meeting the SOW management and staffing requirements. Id. at 41. In this regard, the RFP provided estimated staffing requirements for each performance period for offerors to use in preparing their

² TABSS contractors provide professional services to DHS components to support a wide range of acquisition lifecycle requirements, including program, financial, and contract management services and audit support. www.dhs.gov/tabss (last visited Feb. 9, 2016).

³ The RFP stated that the majority of the task order work would be performed on a fixed-price basis, but the RFP schedule also included labor hour and cost reimbursable contract line items. RFP at 4-7.

proposals, including notional numbers of positions for each SOW functional area and total estimated labor hours.⁴ See id. at 42. Offerors were also to propose individuals (and submit resumes) for seven key personnel positions that were considered essential to the work, and the solicitation specified roles and qualifications for each position.⁵ Id. at 32-33, 41. Finally, offerors were to describe their risk management approach and provide plans for the incoming and outgoing transition periods, among other things. Id. at 41-42.

The RFP stated that technical proposals would be evaluated to assess an offeror's understanding of solicitation requirements, under two equally important evaluation subfactors: technical approach and management approach. Id. at 47, 51. Under the technical approach subfactor, the RFP stated that the agency would assess an offeror's demonstrated understanding of the program requirements, the program environment and strategy, and the integrated management framework, as well as the degree to which the offeror's proposal included innovative or efficient methodologies and analytical techniques. Id. at 47.

Under the management approach subfactor, the RFP stated that the agency would evaluate the completeness of an offeror's staffing plan and labor mix, and the degree to which the offeror proposed an efficient and effective approach to managing and performing the task order with minimal risks, including during the transition periods. See id. at 48. The agency would also evaluate how the offeror would manage and develop resources and obtain the required staff, including the offeror's methodology for retaining personnel, leveraging and tailoring their skills to OTIA acquisition programs, and maintaining their technical expertise. See id. Moreover, the agency would assess the degree to which the offeror provided expertise, including whether the offeror's personnel met SOW requirements, their relevant skills and experience level for their proposed SOW tasks, how personnel would contribute to the OTIA, and their availability dates.⁶ See id. With regard to

⁴ For example, the RFP estimated that a total of 67,200 hours were required for the base year and that five positions were required for acquisitions management for each performance year. See RFP at 42.

⁵ The key personnel positions were: (1) project manager/site lead; (2) project manager; (3) senior program management specialist; (4) program management specialist; (5) SME senior financial analyst; (6) junior administrative analyst; and (7) mission support division (MSD) data analyst. RFP at 32-33. Offerors could also propose specific individuals to lead "non-key Functional" areas. See id. at 41; RFP amend. 1, Questions & Answers, No. 58 (non-key functional leads).

⁶ The RFP required that all personnel employed by the contractor to perform work under the SOW must have, or be able to favorably pass, a security background investigation, and certain employees were also required to possess specified levels of security clearances. RFP at 21-23. Within 10 working days after award, the

(continued...)

key personnel and non-key functional leads in particular, the RFP stated that the agency would evaluate their resumes, qualifications, and availability to begin work on the date of award. Id.

CBP received proposals from eight TABSS contractors, including ATG (the incumbent) and MacB, which were evaluated as follows:

	Technical/ Management	Past Performance	Total Evaluated Price
ATG	Satisfactory / medium risk	Superior	\$46,653,342
MacB	Good / low risk	Superior	\$53,875,880

Agency Report (AR), Tab 21, Source Selection Evaluation Board (SSEB) Report, at 50. Technical proposals were evaluated by a technical evaluation team (TET), which documented its findings, including its assessment of ratings, strengths, weaknesses, deficiencies, and risks, in a detailed evaluation report. See generally AR, Tab 17, TET Report. The offerors' past performance and price were evaluated by a past performance evaluation team (PPET) and price evaluation team (PET), respectively. AR at 5.

The TET assessed ATG's technical proposal six strengths, three risks, and no weaknesses or deficiencies. AR, Tab 17, TET Report at 16-18. Among other things, the TET found that ATG's proposed labor hours presented a medium risk because ATG proposed [DELETED] percent fewer hours than the government estimate, but its proposal did not address the reduction. See id. at 17-18. Moreover, the TET found that ATG's proposal--to have one individual perform three management roles--presented a low risk.⁷ Id. at 18. The TET also noted that ATG's project manager/site lead was priced for only [DELETED]. Id.

(...continued)

contractor must also provide a list of all employee candidates who possess favorably adjudicated background investigations. Id. at 21. In that regard, the solicitation required an offeror to identify the date that it expected to submit background investigation packages to the agency. Id. at 41.

⁷ ATG proposed the same individual as the [DELETED]. AR, Tab 9, ATG Tech. Proposal, at 42.

The TET assessed MacB's technical proposal 11 strengths, two risks, and no weaknesses or deficiencies. Id. at 27-30. The TET found, among other things, that MacB's management approach presented a low risk that MacB could not recruit the incumbent staff (as MacB had proposed) at its historic capture rate, but the TET found that MacB recognized the risk and detailed [DELETED] to staff the contract. See id. at 30.

A source selection evaluation board (SSEB) reviewed the TET, PPET, and PET reports, reevaluated proposals, and conducted a comparative analysis of proposals.⁸ See AR, Tab 21, SSEB Report, at 3. The SSEB generally concurred with the TET evaluations, but also assigned new weaknesses and found that some of the TET's assessed strengths were not, in actuality, strengths.⁹ See id. at 40-50. In its comparative analysis, the SSEB noted that ATG and one other offeror proposed lower prices than MacB, but the SSEB found that the lower prices were driven by their (ATG's and the other offeror's) proposed staffing plans and reduced staffing levels. Id. at 51-52. The SSEB found that those staffing plans and staffing levels reflected increased risks and greater uncertainties that the two lower-priced offerors would successfully meet all requirements. Id. While the SSEB acknowledged that ATG's price was 15 percent lower than MacB's price, the SSEB determined that MacB's higher-rated, lower risk proposal provided the greatest level of confidence that MacB would successfully perform the requirement. Id. at 52. The SSEB determined that MacB's proposal was worth the price premium and recommended that the task order be issued to MacB. Id. at 52-53.

A source selection advisory council (SSAC) reviewed the SSEB report, as well as the TET, PPET, and PET evaluation reports and the evaluation process, and also conducted an independent comparative analysis of proposals. AR, Tab 22, SSAC Report, at 2-8. The SSAC agreed with the SSEB's conclusions and also recommended award to MacB. Id.

The Deputy Assistant Commissioner for OTIA, who was the source selection authority (SSA) for the procurement, also reviewed the evaluation reports, as well as the SSEB's and SSAC's award recommendations, and the SSA conducted a best-value tradeoff. AR, Tab 23, SSA Decision Mem., at 1-5. As discussed below, the SSA concluded that MacB's higher technically rated, lower risk proposal was worth the price premium over ATG's lower technically rated, higher risk proposal,

⁸ The SSEB was comprised of the TET, PPET, and PET evaluators and was chaired by the Senior Business Operations Specialist for the OTIA Acquisitions Management Directorate. AR, Tab 21, SSEB Report, at 3.

⁹ For example, while the TET found that the insufficient detail or rationale for ATG's lower staffing level presented a risk, the SSEB assessed this as a weakness. AR, Tab 21, SSEB Report, at 47.

and he determined that MacB provided the best value to the agency. Id. at 5. CBP issued the task order to MacB and this protest followed.¹⁰

DISCUSSION

ATG challenges CBP's evaluation of ATG's and MacB's technical approach, staffing plan and labor mix, and key personnel, as well as the agency's cost/technical tradeoff and best-value determination. While our decision here does not specifically discuss every argument raised, we have considered all of ATG's assertions and find that none furnishes a basis for sustaining the protest.

Evaluation of Technical Approach

ATG argues that CBP evaluated ATG's and MacB's technical proposals based on an unstated evaluation criterion, and that the agency failed to consider ATG's incumbent experience in evaluating the protester's technical approach. ATG maintains that CBP evaluated MacB's technical approach based on an unstated evaluation criterion because the TET assessed a strength in MacB's proposal, according to ATG, for corporate experience, even though the RFP's evaluation criteria did not provide for consideration of corporate experience. Alternatively, ATG argues that even if the RFP had provided for the assessment of corporate experience, CBP evaluated the two offerors unfairly and disparately in that regard because ATG has the most relevant experience possible as the incumbent contractor. The protester also complains that the technical evaluators did not credit ATG for its experience, but instead favored MacB's less relevant experience outside the agency.

CBP argues that the evaluators' consideration of MacB's experience is consistent with the technical approach evaluation criteria, which provided that the agency would assess an offeror's demonstrated understanding of program requirements and integrated management framework. The agency also argues that its evaluation of both proposals was reasonable and equal.

In reviewing protests of an agency's evaluation in a task order competition as here, we do not reevaluate proposals but examine the record to determine whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. See Science Applications International Corp., B-405718, B-405718.2, Dec. 21, 2011, 2012 CPD ¶ 42 at 10.

¹⁰ The estimated value of the task order at issue is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. We find, based on our review of the record, that CBP evaluated ATG's and MacB's technical approaches reasonably and consistent with the solicitation's criteria.

As described above, offerors were to propose a technical approach to meet the SOW technical requirements. RFP at 41. The RFP stated that the agency would evaluate technical approach to assess an offeror's demonstrated understanding of the program requirements, the program environment and strategy, and the integrated management framework, as well as the degree to which the offeror's proposal included innovative or efficient methodologies and analytical techniques. Id. at 47.

The SOW required the contractor to provide highly experienced personnel, subject matter experts, and professional support services (not just to OTIA, but to offices across CBP and DHS) in the following areas, among others: (1) producing documents for GAO and Office of Inspector General (OIG) requests and audits; (2) assisting with reports to Congress and responses to congressional requests; (3) developing and documenting Inter-Agency Agreements; (4) acquisition and procurement planning, including conducting market research and developing independent government cost estimates; (5) coordinating field activities with federal, state, and local agencies; (6) using GAO/CBP standardized cost products and processes; (7) preparing response to requests from DHS, CPB, and other agencies; (8) developing program and budget justification reports and other documents required by the Office of Management and Budget (OMB) and other government agencies; and (9) monitoring and tracking agency compliance rates and responsiveness to OMB, DHS, GAO, and OIG. RFP § J-1, SOW at 2, 4-6, 8-14, 18. The SOW also specifically requires the contractor to have expert knowledge regarding federal government business management policies and practices, as well as an understanding of DHS or Department of Defense (DOD) management directives. Id. at 11, 18.

As relevant here, the TET assessed a strength in MacB's technical approach because MacB

has the depth and breadth of experience across the Federal Government, including CBP[,] instead of focusing on just one type of service experience including successful support to Marine Corps Recruiters and Department of the Treasury Bank Examiners, both of which have wide geographic dispersion and unique services and security requirements. This is beneficial to OTIA as it brings in different perspectives, experiences, lessons learned from other agencies[,] as well as the intimate knowledge of CBP.

AR, Tab 17, TET Report, at 27-28.

In light of the SOW requirements, we cannot agree with ATG that it was “both irrational and flatly contrary to the RFP’s stated evaluation criteria” for CBP, in evaluating MacB’s technical approach, to consider MacB’s experience outside the agency. Id. at 2-18; RFP at 47; see also AR, Tab 9, ATG Tech. Proposal § 1.0, Tech. Approach, at 3 (citing support for “Interagency Agreements with the Naval Surface Warfare Centers, the National Assessment Group, and the Navy’s operational test and evaluation organization” to demonstrate ATG’s understanding of program requirements and experience, and stating that ATG “will continue supporting OTIA’s efforts to capture DoD Re-Use equipment for additional capability”). On the contrary, we find reasonable the TET’s assessment that MacB’s technical approach demonstrated a strength for its breadth of federal experience. In any event, while the SSEB (which reevaluated proposals as discussed above) generally concurred with the TET’s assessment, the SSEB considered the overall value of the TET’s assessment of such “experienced-based strengths to be somewhat diminished as they appear more like past performance than a technical solution.”¹¹ AR, Tab 21, SSEB Report, at 41.

We also find no merit to the protester’s assertion that the agency “refus[ed] to acknowledge ATG’s direct relevant experience as the incumbent[,] while crediting MacB for far less relevant experience.” Protester’s Comments at 17. In fact, the record demonstrates that the agency evaluated the proposals equally and assessed strengths for ATG’s incumbent experience, including, that it would enable the agency to effectively manage its entire acquisition workforce and rapidly respond to questions from DHS, Congress, and auditors, because ATG had developed the agency’s acquisition workforce database. AR, Tab 17, TET Report, at 16-17. Accordingly, while ATG disagrees with the agency’s evaluation of ATG’s and MacB’s technical approaches, the protester’s disagreement, standing alone, does not establish that CBP acted unreasonably or provide a basis to sustain its protest.

¹¹ The SSEB also considered that all offerors except ATG received a strength for “demonstrate[ing] ‘depth and breadth’ of experience necessary from serving both Federal and commercial clients that can be leveraged to meet this requirement,” and thus concluded that the strength did “not significantly affect the outcome of the evaluations.” AR, Tab 21, SSEB Report, at 40. The SSEB also noted that the reason ATG did not receive a strength in this regard was because ATG focused almost entirely on work it does on the current contract and was largely silent on other government support work. Id.

Evaluation of Staffing Plan and Labor Mix

ATG maintains that its staffing plan was evaluated unreasonably because, in the protester's view, CBP only considered proposed job titles and labor category labels, but did not actually evaluate the qualifications, experience level, or seniority of ATG's proposed staff. ATG complains that MacB did not identify individuals for non-key personnel staff positions, but only proposed labor categories, and ATG contends that CBP never evaluated the skills and qualifications of MacB's largely theoretical personnel. In this regard, ATG disputes CBP's assessment that MacB proposed more senior level staff than ATG proposed. ATG also asserts that agency evaluators simply mechanically compared ATG's level of effort to CBP's staffing estimates and did not adequately consider ATG's proposed approach for cross-matrixing staff.¹² ATG disputes the agency's assessment that its approach reflected a weakness and performance risk.

CBP argues that it evaluated the staffing plans and labor mixes reasonably and consistent with the RFP. The agency contends that it properly reviewed and categorized proposed labor categories, and applied the same criteria in that regard to all offerors consistently. CBP asserts that the TET did evaluate whether an offeror proposed staff with appropriate years of experience, and that the TET reasonably found that both ATG and MacB proposed sufficiently qualified and experienced staff. The agency also maintains that the weakness and risk of ATG's staffing and labor mix was that it proposed an insufficient number of staff without a supporting explanation. In this regard, CBP explains that ATG proposed a total of [DELETED] employees to perform this task order, yet at no point under the incumbent contract did ATG ever provide less than [DELETED] employees. Moreover, CBP points out that ATG proposed no staff for a new SOW functional area (acquisition management). The agency maintains that it reasonably assessed a weakness in ATG's staffing level in that respect, because, apart from two conclusory statements and a generic chart about staff matrixing, ATG's proposal failed to provide a detailed explanation of how it would meet SOW requirements at such low staffing levels.

Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Bay Area Travel, Inc. et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 9; Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 5-7. As with any procurement, an offeror has the burden of submitting an adequately-written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc.,

¹² ATG does not dispute the agency's labor estimates and did not protest the terms of the solicitation in that regard.

B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6. Based on our review of the record, we find CBP's evaluation of the offerors' staffing plans and labor mixes unobjectionable.

As described above, the RFP stated that CBP would evaluate the completeness of an offeror's staffing plan and labor mix, and the degree to which the offeror proposed an efficient and effective approach for managing and performing the task order with minimal risks. See RFP at 48. The RFP also stated that CBP would evaluate how the offeror would manage and develop resources, obtain required staff, retain personnel, leverage and tailor their skills to OTIA acquisition programs, and maintain their technical expertise. See id. Moreover, CBP would assess whether the offeror provided the required expertise, whether personnel met SOW requirements, their relevant skills and experience level for their proposed tasks and how they would contribute to the OTIA program, and their date of availability. See id. The record reflects that the agency considered these factors in evaluating ATG's and MacB's proposed staffing plans and labor mixes.

The TET evaluated offerors' staffing approach and labor mixes by first determining the extent to which an offeror proposed junior-level, mid-level, and senior-level personnel. See AR, Tab 21, SSEB Report, at 6.¹³ Labor categories that included the terms senior or subject matter expert (SME) were considered senior level categories. Id. The TET also considered certain key positions such as program manager and project manager to be senior level categories. Id. Labor categories that included the term junior were considered junior level, and categories that did not include the term junior or senior were considered mid-level categories. Id. Finally, labor categories with hierarchical ranks (such as Project Analyst I and Project Analyst II) were considered junior and mid-level categories, respectively. Id. The TET then compared offerors' proposed labor hours and labor categories for each functional SOW area for the base year. Id. at 7, 46-47.

Contrary to ATG's assertion, however, the evaluation did not stop there. The record demonstrates that the TET also reviewed and confirmed that the descriptions of the skills and experience for each labor category were consistent across offerors. Id. at 7. The record also states that the technical and price evaluators compared an offeror's (including ATG's) proposed labor categories to their TABSS categories and evaluated any new categories. See id. at 34. The record further states that the technical and price evaluators reviewed an offerors' basis of estimates, assumptions, and labor mix/hours relative to their respective technical approaches. See id. The record also demonstrates that agency evaluators considered whether proposed staff could perform their assigned responsibilities, including management,

¹³ As noted above, the SSEB was comprised of the technical, past performance, and price evaluators.

and their day-to-day workload relative to their proposed functional areas.¹⁴ See, e.g., id. at 46-47; Tab 17, TET Report, at 18. The TET also considered whether an offeror proposed staff that was experienced or required training, for example, to support the acquisition programs and OTIA directorates, including during the transition period.¹⁵ AR, Tab 17, TET Report, at 17.

Based on these considerations and the RFP criteria stated above, agency evaluators concluded that ATG proposed a staffing plan and labor mix that was insufficient to fully perform that work. AR, Tab 21, SSEB Report, at 46-47. For example, the SSEB found that ATG's proposal of only one staff resource for a critical program management portfolio, which was comprised of multiple programs with varying demands, was insufficient given that those programs were at different points in the acquisition lifecycle. Id. at 47. In that respect, the SSEB found that ATG's proposal to further cross matrix that individual to support acquisition management was highly unrealistic. Id. Moreover, the SSEB determined that ATG's proposal did not provide sufficient detail to explain why its proposed workforce or its plan to cross matrix would meet the solicitation requirements. Id. at 13-14, 47.

In contrast, based on the same considerations and criteria, the evaluators concluded that MacB proposed a reasonable and acceptable staffing plan that included a narrative discussion that clearly supported how MacB would meet all SOW requirements. Id. at 48. For example, the TET assessed a strength because MacB proposed [DELETED] to quickly fill surge requirements, which the evaluators found would control costs and avoid potential delays. See AR, Tab 17, TET Report, at 29. The TET also found that MacB's historically high incumbent capture rate of [DELETED] percent reflected a strength that would result in retention of experienced and skilled staff and would minimize delays in providing services to OTIA. Id. Moreover, the evaluators assessed strengths for MacB's proposed [DELETED] to reduce risks during the transition period, and for its [DELETED] percent employee retention rate, which was significantly higher than its competitors and would provide work stability and cost savings. See id. The SSEB concluded that MacB illustrated how it would apply the government's labor estimates as a basis for MacB's final allocation of resources to meet requirements. AR, Tab 21, SSEB Report, at 48.

¹⁴ In documenting strengths assessed under the technical and management approach subfactors, the evaluators referenced the relevant SOW and RFP provisions to the corresponding section of an offeror's proposal. See, e.g., AR, Tab 17, TET Report, at 16-17, 27-29.

¹⁵ For example, the TET, assessed a strength in ATG's staffing plan, because it proposed [DELETED] and no risk transition and would retain its experienced work force, which would reduce transition times, training, and gaps in support services to CBP acquisition programs, and because of the immediate availability of its incumbent staff during transition. AR, Tab 17, TET Report, at 17.

Here, the record demonstrates that the agency conducted an evaluation that was reasonable and consistent with the solicitation criteria. The protester's allegations provide no basis to sustain the protest.¹⁶ See, e.g., Logis-Tech, Inc., B-407687, Jan. 24, 2013, 2013 CPD ¶ 41 at 6 (protest of evaluation of staffing and personnel approach denied where agency reasonably determined that awardee's mix of labor categories and hours were supported by innovative approaches and streamlining initiatives and, unlike protester, awardee staffing plan provided clarity and comprehensive analysis as a basis of estimate).

Evaluation of Key Personnel

ATG maintains that the agency did not evaluate offerors' proposed key personnel fairly, if at all. ATG believes that its proposal should have been assessed a strength because all of its proposed key personnel had incumbent experience or experience working at CBP, and that this should have been a major discriminator in the agency's best-value tradeoff and resulted in award to ATG. ATG also complains that MacB's proposed key personnel were not current employees or committed to working for MacB, and that the record is devoid of any evidence, such as letters of commitment, that these individuals ever agreed to serve as MacB's key personnel. ATG also contends that MacB engaged in an improper bait and switch scheme by proposing key personnel that the awardee did not intend to provide and that were

¹⁶ ATG also alleged that MacB improperly obtained ATG's and its affiliate's proprietary staffing information, including salary data and levels of experience of incumbent employees, in response to a Freedom of Information Act (FOIA) request. We find no merit to these allegations. As the agency points out, ATG's allegation is based exclusively (and selectively) on an isolated FOIA reference in ATG's proposal, and ATG has provided no convincing evidence to support its allegation. See Supp. AR at 9-10, citing Key Book Service, Inc., B-226775, Apr. 29, 1987, 87-1 CPD ¶ 454 at 1-2 (without evidentiary support, protester's allegations that agency improperly disclosed competitor's pricing information are speculative and therefore do not provide a valid basis for protest). Furthermore, MacB (which intervened in this protest) submitted a declaration from its Director of Strategic Pricing, who was involved in preparing MacB's price proposal and who states that MacB never made a FOIA request regarding the incumbent contract or its antecedent proposal. Intervenor's Comments, Exh. A, Declaration of Dir., Strategic Pricing, at 1-2. The Director explains that the references in MacB's proposal to FOIA requests refer to publicly available documents regarding the incumbent contract that CBP has posted on its FOIA website. Id. at 2, citing foiarr.cbp.gov (last visited Feb. 9, 2016). Significantly, despite access to MacB's technical proposal under the protective order, ATG has not identified any aspect of MacB's proposal that reflects the use or reliance on proprietary workforce or salary information of ATG or its affiliate.

unavailable. In this respect, ATG cites conversations after award between MacB's recruitment manager and incumbent personnel, during which the recruiter allegedly stated that all but one of MacB's proposed key personnel were unavailable.

CBP responds that it evaluated ATG's and MacB's proposed key personnel and non-key functional leads as required by the solicitation. CBP asserts that it found that both offerors' proposed personnel met the technical requirements, and that the TET did not need to document its findings in that regard. The agency contends that ATG has not convincingly explained why it should have received a more favorable evaluation rating for its key personnel, or why MacB did not meet requirements and should have received a lower rating.

Our review of the record demonstrates that the agency reasonably evaluated the offerors' key personnel. Contrary to ATG's assertion that the record is devoid of any assessment of key personnel, the record provides clear examples of the agency's assessment. In this regard, the TET found a risk regarding "the multiple roles for one of the identified key personnel, [], who is proposed to be the [DELETED]." AR, Tab 17, TET Report, at 18. In any event, that the evaluators did not specifically discuss the awardee's key personnel does not mean that the agency did not consider them. An agency is not required to document all "determinations of adequacy" or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. Bldg. Operations Support Servs., LLC, B-407711, B-407711.2, Jan. 28, 2013, 2013 CPD ¶ 56 at 5. As the agency explains here, MacB's key personnel met the requirements--the aspects of MacB's proposal that were not rated as a strength or weakness did not warrant or merit any finding and were not reflected in the evaluation documents. See Supp. AR at 4; Tab 33, TET Lead Statement, at 1.

ATG also alleges that MacB engaged in an improper bait and switch by proposing key personnel that the awardee did not intend to provide. To establish an improper bait and switch scheme, a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not reasonably expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Data Mgmt. Servs. JV, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10. ATG furnishes no basis to conclude that MacB either knowingly or negligently represented that it would rely on specific personnel that MacB did not expect to furnish during contract performance. Quite simply, ATG has failed to make the necessary showing here.

ATG's entire bait and switch allegation is based on MacB's post-award recruitment efforts. As the agency and intervenor correctly point out, the mere fact that MacB was recruiting incumbent personnel after award does not establish that MacB's proposed key personnel were unavailable to perform the contract work. See AT&T Gov't Solutions, Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 12. In this

context, our Office has noted that it is neither unusual nor inherently improper for an awardee to recruit and hire personnel previously employed by an incumbent contractor. Lifecare Mgmt. Partners, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 6 n.11.

ATG otherwise points to nothing in the record indicating that MacB's proposed key personnel were unavailable, unwilling, or unlikely to perform under the task order when MacB submitted its proposal. In its comments on the agency report, MacB submitted a declaration from the Vice President of MacB's [DELETED], who oversaw the entire recruitment process for MacB's preparation and submission of its proposal. Intervenor's Comments, Exhib. A, MacB Vice Pres. Declaration, at 1. The individual declares that when MacB submitted its proposal (on April 18, 2014), MacB was fully prepared to provide, and intended to staff the task order with, the individuals that it proposed as key personnel. Id. at 2. The individual states that MacB had obtained formal letters of intent from [DELETED] of its [DELETED] proposed key personnel. Id. The individual also states that the other [DELETED] personnel [DELETED]. Id. at 3. The individual further states that during the 18 months between proposal submission and award (September 30, 2015), MacB did not maintain on-going communications with its proposed key personnel regarding their employment commitments; that the RFP did not require offerors to do so; that the proposed personnel never contacted MacB to inform MacB that they were unavailable; that personnel were not required to do so; and that, following the submission of its proposal, MacB was never contacted by the agency to confirm the continued availability of MacB's key personnel. Id.

ATG does not challenge the veracity of the intervenor's declaration. Indeed, ATG does not address the declaration or MacB's explanation whatsoever. Moreover, ATG does not substantively respond to CBP's arguments in response to ATG's bait and switch allegation. Contrary to the protester's assertion, ATG has not provided "significant countervailing evidence" (Protester's Comments at 20-21)--or in fact any evidence whatsoever--that demonstrates that MacB made a misrepresentation with regard to its proposed key personnel. Thus, ATG has provided no basis for us to sustain its wholly unsubstantiated allegations in that regard. See, e.g., AdapTech Gen. Scientific, LLC, B-293867, June 4, 2004, 2004 CPD ¶ 126 at 5; AT&T Gov't Solutions, Inc., supra.

Best-Value Determination

Finally, ATG challenges the agency's selection decision, asserting that CBP's tradeoff analysis and best-value determination were flawed because they were based on the evaluations that, according to the protester's arguments above, were unreasonable.

As described above, the record does not support ATG's challenges to the agency's technical evaluation and accordingly we find no merit to ATG's objection to the agency's selection decision based upon those alleged errors.

With regard to the agency's tradeoff decision, the record here shows that the SSA recognized that ATG proposed the lowest price and that its proposal showed strengths in acquisition policy and knowledge management. AR, Tab 23, SSA Decision Mem., at 4. However, the SSA agreed with agency evaluators that ATG's staffing plan presented a high risk and great uncertainty that ATG would successfully meet all requirements. Id. at 5. By contrast, he found that MacB's proposal showed strengths in each SOW functional area and that MacB proposed more senior and mid-level staff, creative solutions, and innovations, among other things. See id. at 4-5. We find nothing unreasonable with the SSA's conclusions in that regard.

The protest is denied.

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General Counsel